



Tennessee Housing Development Agency

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MEMORANDUM:

TO: All Recipients of Low-Income Housing Credits

FROM: Donna Duarte, Director of Program Compliance

DATE: December 31, 2005

SUBJECT: Revenue Ruling 2004-82 (the "Revenue Ruling")

In 2004, the Internal Revenue Service ("IRS") issued the Revenue Ruling which dealt with a number of housing credit topics, but specifically noted in Question 5 language regarding the prohibition of actions described in subclauses (I) and (II) of Section 42(h)(6)(E)(ii). This Revenue Ruling requires that tenants in low-income housing tax credit properties cannot be evicted or have their tenancy terminated other than for good cause throughout the compliance and extended use periods and that this provision must be included in the extended low-income housing commitment.

Pursuant to the Revenue Ruling, by December 31, 2004, Tennessee Housing Development Agency ("THDA") reviewed all of its extended low-income housing commitments for compliance with the interpretation of Section 42(h)(6)(B)(i) contained in the Revenue Ruling. THDA determined that certain "catch-all" language contained in all of its extended low-income housing commitments meets the requirements of the Revenue Ruling.

In addition to the Revenue Ruling, the IRS issued Revenue Procedure 2005-37 (the "Revenue Procedure") which establishes a specific safe harbor for meeting the requirements of Section 42(h)(6)(B)(i) as described in Question 5 of the Revenue Ruling. Pursuant to the Revenue Procedure, certain catch-all language contained in the land use restrictive covenant recorded in connection with placing your development in service, in effect, prohibits eviction or termination of the tenancy of any tenant, other than for good cause, throughout the compliance and extended use periods specified in your land use restrictive covenant. Further, this language prohibits increases in gross rents not otherwise permitted under Section 42 throughout the compliance and extended use periods.

The Revenue Procedure also requires that the Annual Owner's Certification of Continuing Compliance ("AOC") contain language to the effect that for the preceding 12-months no tenants were evicted or had their tenancies terminated other than for good cause and that, for the same period, no tenants had an increase in their gross rents not otherwise permitted under Section 42. You will see these additional certifications in the AOC you are required to provide to THDA, beginning with the AOC for 2005. THDA will annually monitor for compliance with both the eviction and gross rent requirements and will issue a Form 8823 in the event of non-compliance.